

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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ELIZABETH A. SCHULTZ,

Plaintiff,

v.

Case No. 17-CV-622

COUNTY OF CHIPPEWA,  
BRIAN KELLEY, and  
PHILLIP MONTWILL,

Defendants.

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**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

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Defendants, County of Chippewa, Brian Kelley, and Phillip Montwill, by their attorneys, von Briesen & Roper, s.c., provide the following admissions, denials, allegations, and affirmative defenses in response to the allegations contained in Plaintiff's Complaint:

**PARTIES**

1. Answering paragraph 1, these answering Defendants admit the allegations contained in this paragraph.

2. Answering paragraph 2, these answering Defendants admit Chippewa County is a county in the State of Wisconsin established pursuant to the Wisconsin Constitution and Wis. Stat. ch. 59, with administrative offices located at 711 N. Bridge Street, Chippewa Falls, Wisconsin, 54729. As for the remaining allegations contained in this paragraph, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; therefore, deny the same and put the Plaintiff to her proof.

3. Answering paragraph 3, these answering Defendants admit Brian Kelley is an adult resident of the State of Wisconsin. These answering Defendants also admit Brian Kelley is currently the Highway Commissioner for Chippewa County. As for the remaining allegations contained in this paragraph, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; therefore, deny the same and put the Plaintiff to her proof.

4. Answering paragraph 4, these answering Defendants admit Phillip Montwill is an adult resident of the State of Wisconsin. Further, these answering Defendants admit Phillip Montwill was the Paving and Crushing Superintendent for the Chippewa County Highway Department. As for the remaining allegations contained in this paragraph, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

5. Answering paragraph 5, Defendants lack the knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; therefore, they deny the same and put the Plaintiff to her proof.

#### **NATURE OF ACTION**

6. Answering paragraph 6, these answering Defendants admit Elizabeth Schultz has alleged that Chippewa County “discriminated against her in terms and conditions of employment, based on her gender, in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e-2.” These answering Defendants also admit Elizabeth Schultz has alleged that Chippewa County “retaliated against her for opposing discriminatory employment practices in violation of 42 U.S.C. § 2000e-3.” Finally, these answering Defendants admit Elizabeth Schultz has alleged that Chippewa County constructively discharged her from her employment position.”

7. Answering paragraph 7, these answering Defendants admit Elizabeth Schultz has alleged that Chippewa County “denied her constitutionally protected rights afforded to her in the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983, and that the County of Chippewa is liable for these violations as well.”

8. Answering paragraph 8, these answering Defendants admit the allegations contained in this paragraph.

9. Answering paragraph 9, these answering Defendants admit the allegations contained in this paragraph.

#### **JURISDICTION & VENUE**

10. Answering paragraph 10, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put the Plaintiff to her proof.

#### **ALLEGATIONS**

11. Answering paragraph 11, these answering Defendants admit the allegations contained in this paragraph.

12. Answering paragraph 12, these answering Defendants admit the allegations contained in this paragraph.

13. Answering paragraph 13, these answering Defendants admit that at all times relevant to Plaintiff's allegations the Highway Department was comprised of nine truck drivers – seven males and two females in the Highway Department. Further, these answering Defendants affirmatively allege the Highway Department had a number of positions other than truck drivers.

14. Answering paragraph 14, these answering Defendants admit the allegations contained in this paragraph.

15. Answering paragraph 15, these answering Defendants deny the allegations contained in this paragraph.

16. Answering paragraph 16, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

17. Answering paragraph 17, these answering Defendants admit the allegations contained in this paragraph.

18. Answering paragraph 18, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

19. Answering paragraph 19, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

20. Answering paragraph 20, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

21. Answering paragraph 21, these answering Defendants admit the allegations contained in this paragraph.

22. Answering paragraph 22, these answering Defendants deny the allegations contained in this paragraph.

23. Answering paragraph 23, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

24. Answering paragraph 24, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

25. Answering paragraph 25, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

26. Answering paragraph 26, these answering Defendants deny the allegations contained in this paragraph.

27. Answering paragraph 27, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

28. Answering paragraph 28, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

29. Answering paragraph 29, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

30. Answering paragraph 30, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

31. Answering paragraph 31, these answering Defendants admit the allegations contained in this paragraph.

32. Answering paragraph 32, these answering Defendants admit the allegations contained in this paragraph.

33. Answering paragraph 33, these answering Defendants admit the allegations contained in this paragraph.

34. Answering paragraph 34, these answering Defendants admit the allegations contained in this paragraph.

35. Answering paragraph 35, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

36. Answering paragraph 36, these answering Defendants deny the allegations contained in this paragraph.

37. Answering paragraph 37, these answering Defendants deny the allegations contained in this paragraph.

38. Answering paragraph 38, these answering Defendants admit the allegations contained in this paragraph.

39. Answering paragraph 39, these answering Defendants admit the allegations contained in this paragraph.

40. Answering paragraph 40, these answering Defendants deny the allegations contained in this paragraph.

41. Answering paragraph 41, these answering Defendants deny the allegations contained in this paragraph.

42. Answering paragraph 42, these answering Defendants admit the allegations contained in this paragraph.

43. Answering paragraph 43, these answering Defendants admit the allegations contained in this paragraph.

44. Answering paragraph 44, these answering Defendants deny the allegations contained in this paragraph.

45. Answering paragraph 45, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

46. Answering paragraph 46, these answering Defendants deny the allegations contained in this paragraph.

47. Answering paragraph 47, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

48. Answering paragraph 48, these answering Defendants deny the allegations contained in this paragraph.

**FIRST CAUSE OF ACTION:  
DEPRIVATION OF CIVIL RIGHTS – EQUAL PROTECTION  
FAILURE TO PROMOTE  
(VIOLATION OF 42 U.S.C. § 1983)  
AS TO INDIVIDUAL DEFENDANTS**

49. Answering paragraph 49, these answering Defendants reallege and incorporate herein as if fully their responses to paragraphs 1 through 48 of Plaintiff's Complaint.

50. Answering paragraph 50, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

51. Answering paragraph 51, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

52. Answering paragraph 52, these answering Defendants deny the allegations contained in this paragraph.

53. Answering paragraph 53, these answering Defendants deny the allegations contained in this paragraph.

54. Answering paragraph 54, these answering Defendants deny the allegations contained in this paragraph.

55. Answering paragraph 55, these answering Defendants deny the allegations contained in this paragraph.

56. Answering paragraph 56, these answering Defendants deny the allegations contained in this paragraph.

**SECOND CAUSE OF ACTION:  
DEPRIVATION OF CIVIL RIGHTS – EQUAL PROTECTION  
FAILURE TO PROMOTE  
(VIOLATION OF 42 U.S.C. § 1983)  
AS TO CHIPPEWA COUNTY**

57. Answering paragraph 57, these answering Defendants reallege and incorporate herein as if fully their responses to paragraphs 1 through 56 of Plaintiff's Complaint.

58. Answering paragraph 58, these answering Defendants deny the allegations contained in this paragraph.

59. Answering paragraph 59, these answering Defendants deny the allegations contained in this paragraph.

60. Answering paragraph 60, these answering Defendants deny the allegations contained in this paragraph.

**THIRD CAUSE OF ACTION:  
DISCRIMINATION IN TERMS AND CONDITIONS OF EMPLOYMENT  
(VIOLATION OF 42 U.S.C. § 2000e-2)**

61. Answering paragraph 61, these answering Defendants reallege and incorporate herein as if fully their responses to paragraphs 1 through 60 of Plaintiff's Complaint.

62. Answering paragraph 62, these answering Defendants deny the allegations contained in this paragraph.

63. Answering paragraph 63, these answering Defendants deny the allegations contained in this paragraph.

64. Answering paragraph 64, these answering Defendants deny the allegations contained in this paragraph.

**FOURTH CAUSE OF ACTION:  
RETALIATION FOR OPPOSING DISCRIMINATORY CONDUCT  
(VIOLATION OF 42 U.S.C. § 2000e-3)**

65. Answering paragraph 65, these answering Defendants reallege and incorporate herein as if fully their responses to paragraphs 1 through 64 of Plaintiff's Complaint.

66. Answering paragraph 66, these answering Defendants lack the knowledge or information sufficient to form a belief as to the truth therein contained in this paragraph; therefore, they deny the same and put Plaintiff to her proof.

67. Answering paragraph 67, these answering Defendants deny the allegations contained in this paragraph.

68. Answering paragraph 68, these answering Defendants deny the allegations contained in this paragraph.

69. Answering paragraph 69, these answering Defendants deny the allegations contained in this paragraph.

**FIFTH CAUSE OF ACTION:  
DEPRIVATION OF CIVIL RIGHTS – EQUAL PROTECTION  
SEXUAL HARASSMENT AND CONSTRUCTIVE DISCHARGE  
(VIOLATION OF 42 U.S.C. § 1983)  
AS TO DEFENDANT CHIPPEWA COUNTY**

70. Answering paragraph 70, these answering Defendants reallege and incorporate herein as if fully their responses to paragraphs 1 through 69 of Plaintiff's Complaint.

71. Answering paragraph 71, these answering Defendants deny the allegations contained in this paragraph.

72. Answering paragraph 72, these answering Defendants deny the allegations contained in this paragraph.

73. Answering paragraph 73, these answering Defendants deny the allegations contained in this paragraph.

74. Answering paragraph 74, these answering Defendants deny the allegations contained in this paragraph.

**AFFIRMATIVE DEFENSES**

These answering Defendants assert the following affirmative defenses. Upon completion of discovery, if the facts warrant, these answering Defendants may withdraw defenses deemed inappropriate. These answering Defendants reserve the right to amend this Answer to assert additional defenses and other claims as discovery proceeds.

1. These answering Defendants reallege and incorporate each and every affirmative defense set forth in Wis. Stat. §§ 802.02(3) and 802.06(2) for the purposes of avoiding waiver of the same as they may apply later in the lawsuit.

2. Upon information and belief, Plaintiff's damages, if any, are not covered by policy or practice of these answering Defendants.

3. Upon information and belief, the Court lacks both personal and subject matter jurisdiction.

4. Upon information and belief, Plaintiff failed to state a claim upon which relief can be granted against these answering Defendants.

5. Upon information and belief, Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations and/or statutes of repose.

6. Plaintiff's claims and recovery are barred, reduced and/or limited pursuant to applicable constitutional, statutory and common law regarding limitations of awards and recovery.

7. Upon information and belief, these answering Defendants are immune from suit under judicial, quasi-judicial, legislative and quasi-legislative immunity.

8. These answering Defendants were acting in good faith and not motivated by malice or with the intent to harm.

9. Upon information and belief, Plaintiff has failed to comply with the notice provisions contained within Wis. Stat. § 893.80, as regards to claims against each of these answering Defendants.

10. Upon information and belief, Plaintiff has failed to exhaust avenues for relief available in forums other than the United States Federal District Court.

11. Upon information and belief, Plaintiff failed to mitigate her damages, if any.

**WHEREFORE**, these answering Defendants demand judgment dismissing Plaintiff's Complaint with prejudice, together with the costs and disbursements of this action and such other and further relief as the Court deems just and equitable.

**THESE ANSWERING DEFENDANTS REQUEST A TRIAL BY JURY**

Dated this 10th day of October, 2017.

von BRIESEN & ROPER, s.c.  
*Attorneys for Defendants, County of Chippewa,  
Brian Kelley, and Phillip Montwill*

By: *s/Christopher P. Riordan*  
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